

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 22-CR-1724 KG

JEROLD CHAVARRIA, and
JERRY ANTOCIO ROMERO

Defendants.

ORDER GRANTING MOTION TO RECONSIDER DETENTION

THIS MATTER came before the Court on Defendant Romero's Motion to Reconsider Detention. *Doc. 81.* The Court has reviewed the motion and the United States' response (*doc. 82*). The motion will be GRANTED.

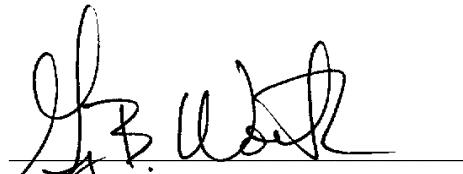
On October 25, 2022, Defendants were charged by indictment with kidnapping in violation of 18 U.S.C. § 1201(a)(1). *Doc. 2.* On November 4, 2022, the United States filed a Motion to Detain and Memorandum in Support of Detention. *Doc. 14.* Neither defendant filed a written response but relied upon oral argument at the detention hearing held on November 8, 2022. *Doc. 15.* Based on the record before the Court, the undersigned found that, as to Defendant Romero, no condition or combination of conditions of release will reasonably assure the safety of any other person and the community; and no condition or combination of conditions of release will reasonably assure the defendant's appearance as required. *Doc. 19.* Neither the order nor the

underlying findings were appealed to the District Judge.

On March 17, 2023, Defendant Romero filed a motion to dismiss the superseding indictment. *Docs. 37.* On June 5, 2023, the Court granted the motion to dismiss without prejudice holding the charges were beyond the jurisdiction of the federal government. *Doc. 50.* The United States has appealed this ruling. *See docs. 58, 73.*

On September 15, 2023, Defendant Romero filed the instant motion to which the United States responded. *Docs. 81, 82.* As the United States noted in its Response, the basis on which Defendant Romero seeks his release has been fully litigated in Co-Defendant Chavarria's case. *See docs. 70, 73, 74, 75, 76, 77, 78, 79, 80.* The United States appears to concede that, while it opposes release for Defendant Romero, nothing distinguishes his case from Defendant Chavarria on this issue. *See generally doc. 82.* The Court agrees that the legal analysis with respect to Defendant Chavarria's detention applies with equal force here. *See docs. 76, 80.* Because detention pending appeal of a complete dismissal of charges is not statutorily authorized, the Court must grant Defendant Romero's motion and order his release. *See id.*

WHEREFORE Defendant Romero's Motion to Reconsider Detention is **GRANTED** and he is **ORDERED** released. As the United States avers that he is facing pending charges in state court, his release should be into the custody of the State of New Mexico.



GREGORY B. WORMUTH
CHIEF UNITED STATES MAGISTRATE JUDGE